

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150-AH10

Source Material Reporting Under International Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations which require licensees to report their holdings of source material (uranium and thorium) to the agency. Currently, licensees are required to file a report with the NRC whenever they receive or transfer uranium or thorium mined outside the United States (U.S.). The amended regulations require licensees to report the receipt or transfer of source material controlled under any of the various international Agreements for Peaceful Nuclear Cooperation. This change will enable the U.S. Government to maintain the comprehensive national inventory of nuclear materials required under these agreements. This rule also allows licensees additional flexibility in submitting their annual source material inventory statements. The amended regulations permit licensees to submit these statements along with their material status reports for special nuclear material.

DATES: The final rule is effective October 1, 2003, unless significant adverse comments are received by **(insert date 30 days after publication in the Federal Register)**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be

ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the Federal Register.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at <http://ruleforum.llnl.gov>. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415-5905; e-mail CAG@nrc.gov.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8126; e-mail mlh1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Current regulations in 10 CFR Part 40 and 10 CFR Part 150 require each NRC and Agreement State materials licensee to maintain an updated inventory of its holdings of source material of foreign origin (e.g., thorium, depleted uranium, and natural uranium mined outside the U.S). Licensees are required to submit a report to the NRC whenever they receive or transfer source material of foreign origin. Some licensees are also required to submit an annual statement detailing their inventory of such material. Information in these reports is entered into a national nuclear materials database called the Nuclear Materials Management and Safeguards System (NMMSS). The NMMSS, managed jointly by the NRC and the Department of Energy (DOE), is the U.S. Government's official computerized accounting system for the possession, use, and shipment of nuclear materials (primarily special nuclear material and source material) in the U.S., whether of foreign or domestic origin.

The U.S. Government uses data in the NMMSS to meet its source material reporting requirements under a number of international agreements promoting global cooperation in the peaceful uses of nuclear energy. U.S. participation in international Agreements for Peaceful Nuclear Cooperation is provided for in Section 123 of the Atomic Energy Act, and approximately 24 such Agreements are in place and active at this time. Under these Agreements, the U.S. Government is obliged to impose controls on the use of certain nuclear materials, ensure that such materials are used only for peaceful ends, and enforce other conditions placed on the import, export, or transfer of specific equipment and nuclear material. As part of an information exchange required by the Agreements, the U.S. Government periodically provides to the

governments of cooperating countries an updated inventory of certain nuclear material held in the U.S. To enable the U.S. Government to meet this obligation, the NRC must ensure that licensees document movement within the U.S. of nuclear material subject to these Agreements, and track any additional nuclear material produced through the use of that material.

As noted, existing NRC regulations require licensees to track and report their holdings of source material of foreign origin, i.e., source material mined outside the U.S. However, under the Agreements for Peaceful Nuclear Cooperation to which it is a party, the U.S. Government is required to report a different range of source material. The NRC's current reporting requirements, which focus on the national origin of source material, no longer adequately serve this purpose. The aim of this rulemaking is to align the NRC's source material reporting requirements for licensees with international reporting requirements agreed to by the U.S. Government. The new requirements will require licensees to track and report source material which the U.S. Government is obliged to report under existing international agreements.

The amended regulation will replace requirements that licensee holdings of foreign-origin source material be reported to the NRC with requirements that licensees track and report source material with foreign obligations. Source material with foreign obligations (or foreign-obligated source material) is nuclear material that the U.S. is obliged to track, control, and report to foreign governments under existing international agreements. Requiring NRC licensees to track and report foreign-obligated source material will result in a database that is more robust and that will better satisfy the U.S. Government's need for specific information on source materials with foreign obligations. Part 110 was revised in 2000 to require importers and exporters to report on license applications the foreign obligations associated with nuclear material being imported or exported (65 FR 70287; November 22, 2000).

A change has also been made to the timing of the yearly statement required for source material with a foreign obligation, providing licensees with increased flexibility. Licensees are given a choice of submitting their annual inventory statements either at the same time as they submit the material status reports on special nuclear material that are required under Parts 72 and 74, or within 30 days after September 30th of each year, as is currently required.

In addition, a change is made to require reporting for any Agreement State licensee who exports one kilogram or more of uranium or thorium source material. The current regulations only require licensees that import such material to report. This information is needed because the U.S. Government is required to report all exports of source material of 1 kg or more to the International Atomic Energy Agency (IAEA). Part 40 already contains this requirement.

Finally, to clarify the scope of this amendment, Parts 40 and 150 will define the term "foreign obligations" for use in those parts to mean "the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material." This definition is consistent with the definition of "obligations" in Part 110.

Section-by-Section Analysis

Section 40.4 - Definitions.

This section is revised to add a definition of “foreign obligations.”

Section 40.64 - Reports.

This section is revised to reflect a change from a requirement to report source material of foreign origin to reporting source material with foreign obligations. This section is also revised to allow licensees to submit their yearly inventory statement of source material with foreign obligations with their material status reports on special nuclear material, providing more flexibility to licensees.

Section 150.3 - Definitions.

This section is revised to add a definition of “foreign obligations.” In addition, the format of this section is updated to conform to current Office of the Federal Register standards for the listing of definitions in 10 CFR Chapter 1. The paragraph designations are removed and the definitions in the section are presented in alphabetical order.

Section 150.17 - Submission to Commission of source material reports.

This section is revised to reflect a change from a requirement to report source material of foreign origin to reporting source material with foreign obligations. This section is also revised to require the reporting of exports of 1 kilogram or more of source material. This amendment makes Part 150 consistent with Part 40, which already requires the reporting of such exports. In addition, this section is revised to allow licensees to submit their yearly

inventory statement of source material with foreign obligations with the licensee's material status reports on special nuclear material, providing more flexibility to licensees.

Procedural Background

Because the NRC considers this action to be noncontroversial and because it is necessary in order to support the U.S. Government's obligations in this area, the NRC is using the direct final rule process for this rule. The amendments to the rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments on this direct final rule by **(insert 30 days after publication in the Federal Register)**, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, “Plain Language in Government Writing” directed that the Government’s writing be in plain language. The NRC

requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading “ADDRESSES” above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is revising the reporting requirements for source material, using as the basis of the requirement whether the material has foreign obligations rather than the foreign origin of the material. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1), (c)(2), and (c)(3); therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule decreases the burden on licensees to report the transfer, import, or export of foreign origin source material (NRC Form 741, OMB Approval Number 3150-0003) by reducing the number of responses by 855 for an annual burden reduction of 641 hours (855 responses X 0.75 hrs per response). Because the burden for this direct final rule is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0020, -0032, and -003.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection request unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. The information reported is necessary to satisfy U.S. Government obligations under nuclear agreements for cooperation. Because not all foreign origin source material has associated foreign obligations, the rule may result in an insignificant decrease in regulatory burden on licensees. DOE/NRC Form-741 is used for the Nuclear Material Transaction Reports required by Parts 40 and 150. Approximately 36,500 DOE/NRC Form-741s are filed each year. Two NRC licensees submit

the majority of the reports documenting the transfer, import, or export of foreign origin source material. These licensees have indicated that approximately 855 fewer reports will be required if the reporting requirement is changed to report only foreign obligation source material. The burden associated with each report is 0.75 hours for a total burden reduction of 641 hours.

The U.S. Government is required to report to IAEA the export of 1 kg or more of source material. The inclusion of Agreement State licensee reporting requirements for exports of 1 kg or more of source material should result in an insignificant increase in regulatory burden to licensees. Based on current information for the last 6 years, only 1 Agreement State licensee has exported source material of 1 kg or more. This licensee actually submitted a DOE/NRC Form-741 for its exports.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is necessary to reflect the nuclear non-proliferation policies of the Executive branch and U.S. Government obligations under nuclear agreements for cooperation.

Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 40 and 150.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.4, the definition of Foreign obligations is added to read as follows:

§ 40.4 Definitions.

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on

imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

3. In § 40.64, paragraphs (a) and (b) are revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material with foreign obligations by 1 kilogram or more or who imports or exports 1 kilogram of uranium or thorium source material shall complete a Nuclear Material Transaction Report in computer-readable format in accordance with instructions (NUREG/BR-0006 and NMMSS Report D-24, "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Safety, Washington, DC 20555-0001. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or

thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under Part 72 or 74, a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR-0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555-0001.

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PART 150 - EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

4. The authority citation for Part 150 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97 - 425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

5. In § 150.3, the paragraph designations are removed, the definitions are arranged in alphabetical order, and the definition of Foreign obligations is added to read as follows:

§ 150.3 Definitions.

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

6. In § 150.17, paragraphs (a) and (b) are revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and §150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material with foreign obligations or who imports or exports 1 kilogram or more of uranium or thorium source material shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR-0006 and NMMSS Report D-24, "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555-0001. Each person who transfers the material shall submit a Nuclear Material Transaction Report in

computer-readable format in accordance with instructions no later than the close of business the next working day. Each person who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraph (d) of this section and §150.17a, each person authorized to possess at any one time and location, under an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under Part 74, a statement of the licensee's source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR-0007), and include the Reporting Identification Symbol (RIS) assigned by the

Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555-0001.

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Dated at Rockville, Maryland, this 21st day of Feb., 2003.

For the Nuclear Regulatory Commission.

/RA/

William D. Travers,
Executive Director for Operations.

Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555-0001.

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Dated at Rockville, Maryland, this 21st day of Feb., 2003.

For the Nuclear Regulatory Commission.

/RA/

 William D. Travers,
 Executive Director for Operations.

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